



England — Parliament — Bills — Historical Series

Some OBSERVATIONS upon
the BILL now depending in Parlia-
ment, for Relief of the unhappy Suf-
ferers in the South-Sea Company.

In a LETTER from a Gentleman of the Law
 to a Member of Parliament.

S I R,



IN Obedience to your Command, I have
 perused (and herewith send you some of
 my Observations upon) the Bill now de-
 pending in Parliament for Relief of the
 unhappy Sufferers by the *South-Sea Com-*
pany, of which Number I am none of the
 least; but I owe so much to Justice as to acknowledge;
 that my Misfortune has arisen more from my own Im-
 prudence,

prudence, led by the Frenzy of the Times, than from the Conduct of the Directors. (How many other Sufferers can or will say the same I know not.) And tho' I am far from justifying all that the Directors have done, yet I think some Allowance may be made for the unexampled Hurry and general Humour of the People, whose perpetual Importunity for what they esteemed Favours might mislead the most steady Judgment.

I shall not however take upon me to say, the Nature of the Punishment of the late Directors and others mentioned in that Bill is greater than the Nature of their Crimes; but this I think I may venture to say, that our Law is entirely unacquainted with such Punishments as by this Bill are inflicted.

Nor shall I take Notice of the great Inequality in the Allowances given to the late Directors, &c. out of their Estates, which bear no Proportion to their Estates, or the Circumstances of their Families, although all of them have been (without Distinction) by the Resolutions of both Houses, declared guilty of the Crimes laid to their Charge, and all are by an Act already passed render'd equally incapable of being Directors of the Bank, South-Sea, or East-India Companies, or voting in any Election or General Court, or having any Employment in or under any of those Companies.

And



And by a Clause in the Bill now depending, they are all to be render'd equally incapable of sitting in either House of Parliament, or enjoying any Employment Civil or Military under the Government.

Nor shall I presume to reason upon the many dangerous Consequences which may attend our Constitution by Laws for punishing Crimes *ex post facto*, the Consequences whereof are obvious to every one who reflects never so little, and therefore need no Enlargement thereupon; and no Man can be secure that the Laws of this Nature, which he may be zealous to make for the Punishment of others, may not at one time or other be brought in Precedent against him or his Family.

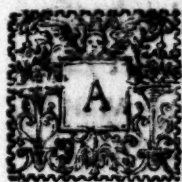
But I shall not detain you longer on these Heads, but proceed to consider the Bill itself as it now stands, and what Defects there appear to me to be therein, and what Inconveniencies may arise therefrom to Multitudes of innocent Persons, who had no Hand in any of the Transactions of the said late Directors, &c.

I have seen a printed Paper entitled, *The Case of the unhappy Sufferers by the South-Sea Company, and of innocent Persons under the said Bill*; but the Author thereof having confined himself only to the Case of the Sufferers

and innocent Persons, has avoided mentioning some Remarks which I think proper to be made: But as that Paper seems to be wrote with Judgment, I shall generally make use of his Expressions in those things which he hath taken Notice of.



AND



N D, 1st, all the Estates, Real and Personal, of the late Sub-Governor, Deputy-Governor, Directors, &c. which they had on or at any time after the 1st of *June* 1720, are vested in nine Trustees in the Bill named, who are at present of the Court of Directors of the *South-Sea* Company. I observe there is no Exception in this Vesting Clause to any Conveyances, Settlements, Charges, Incumbrances, Assignments, Grants, Transfers, or Dispositions, which may have been *bona fide* made before Marriage, or in Performance of any Marriage Articles, or for any other valuable Consideration whatsoever, although really and *bona fide* paid. This is a Severity which not only exceeds any thing in the Acts for vesting the Forfeited Estates in *Ireland* and *Great-Britain* in Trustees for the late Rebellions, which were known Treason at the time of acting the same; but hereby all the Sales, Transfers, and Dispositions, by any of the late Directors, and of Land, Stock and Subscriptions, nay even of Goods and Merchandize since the 1st of *June* 1720, tho' sold for valuable Considerations really paid, are made void, and those Lands, Stocks, Subscriptions and Goods, are actually vested in the Trustees; and yet no Remedy is provided in the Bill for the Purchasers recovering back their Money.

And it is the same Case where the Directors, &c. have purchased any Lands, Stocks, Subscriptions or Goods, since the 1st of *June* 1720; the Trustees have a Right to recover back the Money paid for the same; but the Bill has made no Provision for the Seller to recover back his Lands

Lands, Stocks, Subscriptions or Goods ; so that whoever has had any Negotiation or Dealing of any kind whatsoever with any Director, &c. since the 1st of June 1720, is in danger of being undone, and that not only where the Transactions have been between them and the Directors, &c. themselves, but where the Negotiation has been by the Hands of Brokers or any other Persons, in which any of the Directors, &c. have had any Concern, although unknown to the other Party ; so that no Person whatsoever, who hath had any kind of Dealings since the 1st of June 1720, can be sure he may not be a very great Sufferer by this Bill, if it passes into a Law.

2dly, By this Bill, which declares, (*ex post facto*) the Proceedings of the late Directors, &c. to be Crimes, not only their Estates Personal, and also their Real Estates, are vested in the Trustees ; but also their Estates Tail are vested in the Trustees in Fee, whereby the Remainders and Reversions of innocent Persons in Tail and in Fee are destroyed, which for Breach of Trust never was or could be the Case by our Law ; and even in Cases of Treason, where the Subversion of the whole Government is designedly intended, such Reversions and Remainders are not destroyed nor forfeited.

3dly, This Bill allows to Persons in Great-Britain no longer than till the 29th of September next to make and enter their Claims upon the Estates Real and Personal of the said Directors, &c. and to Persons beyond the Seas no longer than the 25th of December next ; and all Claims not enter'd within that time are to be void, and innocent Persons to be for ever barr'd of their Right. And all

all the Tenants of the said late Directors, &c. altho' they live in the remotest Parts of the Kingdom, must before the 29th of September next give an Account to the Trustees of the Lands they hold belonging to any of the said late Directors, &c. what Rents they pay, and how much in Arrear, and must be at the Charge and Trouble of bringing up their Witnesses to prove their Leases, and of Council, Solicitors, &c. to support the same, or else not only their Leases will all become void, but the Tenants themselves will become subject to the Penalties in the Bill; and where any of the said late Directors, &c. have purchased Lands in the Names of any Trustees, and the Tenants pay the Rents to such Trustees, without knowing that any of the said late Directors, &c. have any Interest in those Lands, yet are those Tenants liable to the Penalties of this Bill, for not discovering that the same belonged to such Directors, &c. The like is the Case of all Debtors to and Creditors of any the said late Directors, &c. How much Loss many innocent Persons, through Ignorance or Inadvertence, may sustain, and how much Trouble, Charge and Expence, many others must unavoidably be put unto, I leave to you or any reasonable Man to consider.

Several of the said late Directors, &c. being great Merchants and Traders, had great Dealings not only in *England* and in *Holland*, *France*, and other neighbouring Countries, but also in the Plantations and other Parts of *America*, and even in the *East-Indies*; so that it will be impossible for many of their Debtors and Creditors so much as to know of this Act; much less will they be able to render such Accounts to the Trustees, and make such Claims before them as the Bill requires to be done, before the 25th December next; and yet in Default thereof,
the

the Creditors entirely lose their Debts; and both Creditors and Debtors are subject to several Penalties in the Bill. And the like is the Case of all their Correspondents abroad, and other Persons having any of their Goods or Effects in their Hands; nay, tho' the Persons in whose Hands any Goods or Effects are, which since the 1st of *June* 1720 belonged to any of the said late Directors, &c. tho' they should not know they belonged to such Directors, &c. yet are they subjected to the Penalties of this Bill for not discovering the same.

4thly, All Claims for Feme-Coverts are to be made only by their Husbands, and for Lunaticks and Idiots by those only who have the Custody of them; so that in cases of separate Maintenance to Wives, a bad Husband may refuse to claim, and thereby the Wife is for ever barr'd of her Right; and by the Neglect of the Custodee of Lunaticks and Idiots, such Lunaticks and Idiots, and their Heirs, will be for ever barr'd of their Right.

5thly, The Claims upon the Personal Estates of any of the late Directors, &c. are by the Bill confined to Debts contracted and due before the 5th *January* 1720; so that all Persons having any Claims upon them for what are commonly called Executory Contracts, or Contingent Demands, will be deprived of their Right: As for Example, If any such Director, &c. hath receiv'd Money to deliver Third or Fourth Subscription Receipts when they shall be delivered out, or hath under-written a Policy of Insurance on Ships, Merchandize, or Lives, which were not lost or dead before the 5th *January* 1720, or have made Contracts for Land, to be conveyed at a future Day, these and such like Executory Contracts and Contingent

tingent Demands being not a Debt due before the 5th of January 1720. cannot be claimed before the Trustees; so that the Money paid to such Directors, &c. on such Contracts will be lost; nor will it be in the Power of such Directors, &c. to make good such Contracts, when their whole Estates are taken away, by being vested in the Trustees. Therefore it seems very reasonable that there should be a Clause added, to enable Persons to claim before the Trustees all such just Debts and Demands as they have or had on any of these said late Directors, &c. which could be recovered against them in the Courts of Law or Equity.

6thly, There seems not to be sufficient Provision made to secure the Persons of the late Directors, &c. and the Allowances made them by the Bill for a Subsistence against such Demands and Suits, which may be had or brought against them for such Executory Contracts or Contingent Demands as aforesaid, or for such Claims as shall not be made before or determined by the Trustees, which surely is a Hardship not intended to be put upon them, when their whole Estates are taken away; and therefore it seems reasonable that a Clause should be added for that Purpose.

7thly, All Conveyances and Transfers of Land or Stock, &c. made by any the said late Directors, &c. or any in Trust for them, since the 5th of Jan. 1720, tho' in pursuance of Agreements made before that Day, and for valuable Considerations really paid, or for securing Debts contracted before that Day, are by this Bill to be made void, and no Provision made in these Particulars

for claiming the same, whereby many innocent Persons may be undone.

8thly, Debts due to the King by any of the late Directors, &c. are to be satisfied out of the Money arising by this Bill, which shall at any time be in the Hands of the Cashier of the South-Sea Company, and the Trustees are to give Order for such Payment upon the Certificate of the Commissioners or Officers of his Majesty's Revenue, that so much Money is due; but there is no Provision made to controvert such Certificate, or try whether such Director, &c. does really owe the King so much Money: Nor is the Payment thereof limited to the Produce of the Estate of such Director, &c. who is the Debtor, altho' his Estate should not amount to so much as the Debt he owes the King; whereby it may happen that one Man's Estate may go to pay another Man's Debt which he owes to the Crown, and thereby the Benefit intended to the South-Sea Company be proportionably defeated.

And 'tis observable, that the Cashier of the Company is directed to obey the Orders for paying the Money so due to the Crown; but there is no such Direction to him to pay the Money decreed to innocent Claimants, nor Penalty on him for not paying the same.

9thly, Tho' the Time limited by the former Act of this Session for the Reward to the Informers for discovering any Concealments of any the Estates of any of the late Directors, &c. is enlarged by this Bill yet is not the Time enlarged to such Directors, &c. themselves to deliver in farther Inventories of what they may have happened to have omitted in the Inventories already delivered

livered into the Barons of the Exchequer ; for making whereof they had a very short Time allowed them.

And if Estates in Parts beyond Sea were given to any of the said late Directors before the making their said Inventories, but not come to their Knowledge till afterwards, yet are they guilty of Felony for not inserting the same in their Inventories.

10thly, The late Directors, &c. are to have no Benefit of the Provision made by the Bill for the Subsistence of themselves and Families, till they have done several Acts thereby required, which will take some time to perform ; and during that time, they and their Families must subsist upon the Charity of their Friends.

11thly, They must execute to the Trustees a Release and Conveyance of all their Real and Personal Estate, which is a Hardship never put upon any Traitor or other Malefactor whatsoever.

12thly, The Trustees, who are made Judges of Claims, are to report their Opinions to the Court of Directors for the time being ; who must also, by a Resolution of Court, declare themselves satisfied with such Opinion ; and the Claimant must under his Hand declare his Acquiescence with such Resolution before the 1st of May next ; upon which, any three Trustees are to give a Warrant for Payment of the Sum adjudged.

This is a tedious Work, and will cause great Delay to the innocent Claimants ; and there is no Penalty on the

the Cashier of the *South-Sea Company*, if he does not pay the Sum directed to be paid by that Warrant.

If the Court of Directors and the Claimant shall not agree, Recourse is to be had, on or before the 24th of *June* 1722, to three of the Judges to hear and determine the Differences on or before the 25th of *December* 1722; and if determined for the Claimant, three of the Judges shall send a Certificate to the Trustees for Payment.

This is a farther Delay to the innocent Claimant, as well as Charge by Council and Solicitors, and by Fees to be established by the Judges, for which no Costs are to be allowed, nor Interest for Money paid to or owing by any the late Directors, &c. And if the Judges decline to act, no body has Power to summon them to meet to make such Determinations.

The Trustees are nine of the present Directors of the *South-Sea Company*, and are Parties concerned in Interest; and tho' they may be Men of great Probity and Capacity, yet being Parties in Interest, are not by the Laws of *England* proper Judges: And 'tis observable that they have no Salaries, but what the Court of Directors shall think fit to allow them.

By this Act, the Trustees are forthwith to sell the Estates Real and Personal of the Directors.

And such speedy Sale of Lands cannot but depreciate the Price of Lands, there being above 500,000 *l.* Value of their Lands to be sold.

And

And will not the Sale of the Stock of the late Directors, &c. by Cant or Auction, according to the Directions of this Act, sink the Stock to a very low Price?

And will not the Buying of Stock be very precarious to all Persons, until all Claims relating to Stock be finally heard and determined, for fear the Stock that may be sold hereafter appear to be the Stock of Directors, which by this Bill is vested in the Trustees? And will not that alone be a great Damp to Publick Credit during the Execution of this new-erected Trust?

Will it be possible to the Trustees to hear and determine all Claims before the first Day of *May* next? Or will it not be necessary to continue the Trustees many Years, (as former Trustees of forfeited Estates have been) to the great Disquiet, Vexation and Expence of Multitudes of Claimants? And till all these Claims are determined, the Benefit to arise by this Bill to the *South-Sea* Company cannot be ascertained.

Will not the great Expence that must attend the Execution of this Act by Salaries to the Trustees, to the respective Officers to be employed under them, to the many Bailiffs and Receivers of the Rents of the Real Estates of the respective Directors, &c. dispersed all over the Kingdom, greatly lessen the Estates Real and Personal that will be vested in the Trustees?

Will not the Hardships be very great upon Tenants, Creditors, and other innocent Persons, in entring their Claims, who must be at the Expence of Lawyers and Solicitors,

tors, and be brought up from all Parts of the Kingdom to attend their Claims, and be at the Expence of Witnesses to attend the Trustees to prove their Demands?

And will not many of these Vexations and Expences happen to such as have been already great Sufferers by the *South-Sea* Stock, who will thereby (instead of being relieved) have Affliction added to Affliction?

These Inconveniencies might be in part remedied by altering the Commencement of the vesting Clause from the first of *June* 1720, to the 5th of *January* 1720, which is agreeable to the former Act of this present Session.

But what I humbly conceive would be best for the *South-Sea* Company, and tend most to the quieting the Minds of all his Majesty's good Subjects, and to the removing the many Inconveniencies aforesaid, and prevent the great Expence which must unavoidably attend the Execution of this Act, not only out of the Estates of the late Directors, &c. but also to very great Numbers of innocent Persons, would be to alter the Nature of this Bill into a Mulct or Fine of about One Million or Twelve hundred thousand Pounds, to be paid by the late Directors, &c. in such Proportions as the Parliament shall think reasonable.

And for evincing thereof, I send you the under-written Calculations.

The Estates of the late Directors, &c. amount, according to their Inventories, to about 2,000,000 l.

Out

Out of which is to be deducted

Allowances made them for their Sub-
sistences about } 350,000 l.

Deficiency of their Estates by Losses,
Sale of their Real Estates at less than
valued in their Inventories, bad Debts,
&c. may reasonably be supposed to be } 150,000 l.
about

Expences in the Execution of the Act by
Salaries to the Trustees, Secretary,
Accomptants, Receivers, Bailiffs, Stew-
ards, and other Officers, in collecting
in the Debts, making Surveys of their
Estates, and otherwise during the } 300,000 l.
Continuance of the Trust, will, by a
moderate Computation, amount to
not less than

Total Deductions - - - - - 800,000
Net Produce remaining of the Estates } 1,200,000
will be but }

So that should the Mulct or Fine be 1,200,000 l. the
Company would be ascertained of a Sum as great as
they are like to receive if the Bill stands as it does, and
the Nation would be quieted, and innumerable innocent
Persons be freed from those Fears, Losses, Charges and
Expences, which by the Bill, as it now stands, they must
be unavoidably liable unto.

Out of which is to be deducted

Allowances made them for their Sub-
 stances about 370,000

Deficiency of their Estates by Losses
 of their Real Estates as less than
 valued in their Inventories, and Debts
 Or may reasonably be supposed to be
 about 150,000

Expenses in the Execution of the Act by
 Attorneys to the Trustees, Secretary,
 Accompanys, Receivers, New
 and other Officers making
 in the Debt, making
 Estates, and otherwise the
 Continuance of the Trust, will be a
 moderate Compensation, amount to
 not less than 300,000



Total Deductions
 Not Proved remaining of the Estates
 will be but 1,200,000

So that should the Mould or Fine be 1,200,000 the
 Company would be ascertained of a Sum as great as
 they are like to receive if the Bill stands as it does, and
 the Nation would be quickened, and innumerable innocent
 Persons be freed from those Fears, Losses, Charges and
 Expenses, which by the Bill, as it now stands, they must
 be unavoidably liable unto.